1950 that were lawfully levied and collected ostensibly for causing a county public hospital building to be erected and maintained in said county as provided by the laws of Kansas.

That notwithstanding the laws of Kansas in such cases, the former and present members of the boards of county commissioners and hospital trustees of said county, knowingly and wilfully and with the intent then and there and now and hereafter to violate the laws and to deprive and deny plaintiff and other persons resident in said county and state of the equal protection of the laws used the proceeds of the aforesaid taxes paid by plaintiff to erect, equip and maintain in said county a small building for use by and which was used by only one doctor in the private practice of medicine; that said building erected as aforesaid was not built according to plans and specifications approved by the Kansas State Board of Health; that it cannot be and it will not be licensed as a hospital by said Board of Health.

That said Act was enacted for the express purpose of condoning, validating and confirming the misappropriation of said collected county hospital taxes and the violations of the Kansas county hospital laws as aforesaid; of making the boards of hospital trustees and county commissioners of said county not amenable to Sections 1801 to 1815 and Acts supplemental thereto of Chapter 19, and Sections 425 to 441 of Chapter 65 General Statutes of Kansas, year 1949, and to deprive and deny plaintiff and other persons of their rights without due process of law and the equal protection of the laws.

That to secure funds with which to further equip and maintain said small building as a private medical doctor's office in violation of law defendants in said action have levied and seek to collect from plaintiff a tax of .500 mills on each $1000 of plaintiff's property for the year 1958, which defendants have designated as a "hospital tax" under and pursuant to said Act, which Act purports to and will if enforced as it has been enforced deprive plaintiff of the very thing he is entitled to by the Kansas laws and for which defendants seek to tax him, to-wit: a hospital.

That plaintiff has no adequate remedy at law, that he will suffer irreparable injury and will be denied the equal protection of the laws of Kansas if said Act is not declared null and void and the enforcement and operations and executions thereunder are not enjoined and that he will be deprived of property without due process of law in a denial of rights secured to him under the Fourteenth Amendment to the Constitution of the United States.

The prayer of the complaint was that plaintiff have a judgment that said Act was invalid and the actions and orders of all of the defendants thereunder were null and void, that a permanent injunction issue restraining the defendants and their successors in office from maintaining, directly or indirectly, and operating at public expense in Wallace County, Kansas, any real or personal property, including a building or buildings, and the building hereinbefore specifically mentioned, solely as a clinic,

medical clinic, health center, emergency first aid station or as a private medical doctor's office, and from ever levying or collecting any public tax or taxes whatsoever within said county for the establishment, support, maintenance and operation of such property, or properties, as a clinic, medical clinic, health center, emergency first aid station or as a private medical doctor's office, and from enforcing, operating under or executing said Chapter 153, Laws of Kansas, year 1955, and any and all parts thereof, and compelling them and each of them to revoke and nullify all permits and orders theretofore granted or issued under or pursuant to said Chapter 153, Laws of Kansas, year 1955.

After notice and hearing the District Court on February 6, 1958, entered the challenged judgment dismissing the complaint for want of jurisdiction for the reason that "even though the violation of civil rights is alleged, in the absence of diversity of citizenship and $3000 involved this court has no jurisdiction because Congress has withheld jurisdiction in that sort of a case except where there is diversity of citizenship and the $3000 involved," and for the reason that part of the relief sought was to enjoin a tax levy under state law where there was an adequate remedy under state laws. The court stated: "We think that the judgment must be entered for the defendants on jurisdictional ground but that the judgment shall be without prejudice to the right, if any, of the plaintiff to proceed in the state court and that will be the judgment of the court." Notice of appeal was filed in the District Court on April 7, 1958.

THE QUESTIONS ARE SUBSTANTIAL.

The questions presented by this appeal are substantial and of great public concern and importance. They involve the jurisdiction of the District Courts to redress the deprivations of rights secured by the Constitution of the United States. The decision of the court below appears to have impaired that jurisdiction and unsettled questions previously decided by this Court by its holding that it has no jurisdiction to entertain an action brought pursuant to Title 28 U.S. Code, Section 1343, where the amount in controversy does not exceed $3000.00 exclusive of interest and costs, where there is no diversity of citizenship and where an incidental part of the relief sought cannot be given by reason of Section 1341, Title 28 U.S. Code.

The questions are substantial because the District Court has apparently misconceived the relationship which Sections 1331, 1332, 1341 and 1343, Title 28 U.S. Code, bear to one another. The District Court has apparently misconceived and overlooked the decisions of this Court in *Hague vs. C.I.O.*, 307 U.S. 496, 507-514, 527-532; *Douglas vs. Jeannette*, 319 U.S. 157, at 161, and *American Federation of Labor vs. Watson*, 327 U.S. 582, at 590.

While it is clear that the District Court has improperly proscribed its jurisdiction and its judgment should be reversed with directions to proceed to exercise its jurisdiction, the questions presented require plenary consideration and oral argument so that the relationship of the above sections of Title 28 may be fully explored and ex-

amined by this Court and a clear direction may be made to the District Court as well as all of the other district courts that where an action is commenced by a person to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal right of citizens, or of all persons within the jurisdiction of the United States, there need be neither diversity of citizenship nor jurisdictional amount involved, and that such rights are inherently incapable of pecuniary valuation.

Respectfully submitted.

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APPENDIX A.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JESSE I. LINDER, Plaintiff — Civil Action
vs. — No. T-1754
HOWARD B. COLLINS, et al., Defendants

JOURNAL ENTRY OF JUDGMENT

The above action, having been tried before a statutory three-judge District Court, upon agreed facts, submitted to the Court, after argument and duly considered, came on for decision, the parties appearing by their respective counsel of record. The Court, being duly advised in the premises, rendered its opinion per Bratton, Chief Judge, as follows:

"Gentlemen, in the pleadings and in the oral argument this morning something has been said, and alleged in the pleadings, and was said this morning, with respect to the circumstances under which this facility out at Sharon Springs was established, the circumstances under which the original tax was levied, the circumstances under which the original money was produced, and the manner in which it was expended, the making of the contract with this one doctor that operated a year and then went out of the picture, the relationship with respect to the operation being a medical center rather than a hospital.

"Now, as to all of those matters which have gone before that is water over the dam, so to speak. It is not the province or the function of this Court to deter-

mine whether the original levy was valid or invalid. It was made, the money was paid, the money has been spent, and there is nothing this Court could do about it, if it were so disposed.

"As to everything in the past, if I may use a colloquial expression, we will not undertake to unscramble that.

"The case comes down to the question of present and prospective levying of taxes for the operation and maintenance of this institution in the future. Viewing it from that standpoint the case takes two aspects. One is, viewing it as a proceeding for a declaratory judgment, declaring that a tax for that purpose would be invalid. The difficulty confronting the plaintiff there is that there is no diversity of citizenship and there is less than $3,000.00 involved. That takes from the Court jurisdiction to adjudicate the matter as a proceeding for a declaratory judgment.

"The plaintiff in his pleading and at the bar of the Court this morning lays emphasis upon the fact that his civil rights are being violated but Congress has the right to grant or withhold from this Court jurisdiction to entertain a specific type of case or to deny it and when the case is viewed as one for a declaratory judgment, even though the violation of civil rights is alleged, in the absence of diversity of citizenship and $3,000.00 involved this Court has no jurisdiction because Congress has withheld jurisdiction in that sort of a case except

where there is diversity of citizenship and the $3,000.00 involved.

"The other aspect of the case is, viewing it as one to enjoin a tax levy under state law. The section of the Statute to which counsel have addressed themselves is commonly referred to as the Johnson Act. It gets that title because it was introduced by Senator Hiram Johnson of California. The basis for it was that Federal Courts should not interfere with the operation of a State's fiscal policies, fiscal operations, if the parties had an adequate remedy in the State or under State law. The underlying reason for it is obvious: It is the function of the State to impose taxes for community purposes and to expend the money for community purposes and the policy of the Federal Court should not interfere with the State in its fiscal matters if the party has adequate remedy under State Law.

"It seems to be admitted here that the plaintiff, or others similarly situated, can go into the State Court, or first into a departmental agency and then into the courts and then from the proper State Court to the Supreme Court of The United States and so the second obstacle that confronts the plaintiff as far as this Court is concerned is that he is confronted with the Johnson Act which takes from this Court jurisdiction to enjoin the imposition of the levying of the tax if the plaintiff is situated so as to have adequate remedy in the State Courts.

"Much has been said about the recent Act commonly referred to as the Curative Act. (G.S. 1957 Supp. 17-1848A). It seems to be conceded that the act applies to the contentions whether it is constitutional or unconstitutional. The members of this Court think that the Statute is not open to the challenge of unconstitutionality. We think it was within the province of the State to enact the Statute. We think it does have curative effect. It does, in effect, list clinics, health centers, along in the general category with hospitals and we think it is within the province of the Legislature of the State to make that characterization. We think the Statute is not open to the challenge that it is unconstitutional. We think it is declaratory of a policy of the State, public policy of a State, to say that a clinic or a health center falls fairly and comparably in the general category of a hospital having to do with health and public welfare and things of that kind. And we leave to the State Courts the province of declaring that Statute unconstitutional. This Court declines to do that.

"We think that the judgment must be entered for the defendants on jurisdictional ground but the judgment will be without prejudice to the right, if any, of the plaintiff to proceed in the State Court and that will be the judgment of the Court."

IT IS THEREFORE BY THE COURT CONSIDERED, ORDERED, ADJUDGED AND DECREED That

the above entitled action should be and hereby is dismissed, with the costs taxed to the plaintiff.

ENTERED This 19th day of February, 1958.

Sam G. Bratton

Hon. Sam G. Bratton
Chief Judge of the Court of Appeals for the Tenth Circuit

Stephen S. Chandler

Hon. Stephen S. Chandler
Chief Judge of the District Court for Western Oklahoma

Delmas C. Hill

Hon. Delmas C. Hill
Judge of the District Court for the District of Kansas

APPROVED:

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